

**UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

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DR. HANSEL M. DeBARTOLO

Plaintiff,

v.

AETNA LIFE INSURANCE COMPANY A/K/A  
AETNA HEALTH OF ILLINOIS INC.

Defendant.

Case No. 07 C 2525  
Judge Marvin E. Aspen  
Courtroom 2568  
Magistrate Judge Jeffrey Cole  
Courtroom 1838

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**AETNA’S MOTION FOR ENTRY OF FINAL JUDGMENT**

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Defendant, Aetna Life Insurance Company a/k/a Aetna Health of Illinois Inc. (“Aetna”), by its attorneys, moves for the entry of a final judgment in its favor, dismissing Aetna with prejudice from this litigation. In support of its motion, Aetna states as follows:

1. Plaintiff filed a four count Complaint seeking payment of medical benefits from Aetna under the Employee Retirement Income Security Act (“ERISA”) and under common law theories.
2. Aetna filed a Motion to Dismiss the Complaint in its entirety with a supporting memorandum explaining why it was not and could not be liable as a matter of law. That motion was brought in part as a motion for summary judgment to the extent it relied on documents that were not attached to the Complaint, copies of which were provided and authenticated.
3. In response to Aetna’s Motion to Dismiss, plaintiff filed a Motion to Withdraw Complaint which he noticed for presentment on August 2, 2007. In his motion, plaintiff concedes that he has no claims against Aetna under any of the counts of his Complaint and asks to “withdraw

the Complaint against Aetna so that he may investigate the proper Plan Administrator for the collection of the debt.” (Motion to Withdraw at ¶ 4). A true and correct copy of the Motion to Withdraw is attached as Exhibit A.

4. Plaintiff has had an opportunity to state his claims against Aetna. Faced with the Motion to Dismiss and supporting memorandum, plaintiff has (properly) determined that he has no claims and he has not asked leave to replead against Aetna.

5. By withdrawing his Complaint (rather than seeking dismissal of his claims against Aetna) plaintiff is circumventing the procedures for dismissing parties and claims. To avoid being placed in a limbo-like status that would result from the withdrawal of his Complaint - that is, where there are no claims asserted against Aetna but it has not been dismissed from suit - and for finality, Aetna seeks an order entering judgment in its favor under Rule 41<sup>1</sup>, under Rule 52(a) or, if plaintiff intends to amend his Complaint by naming and serving a different entity, then under Rule 54(b) (so that judgment would be entered against fewer than all of the parties, with an express finding that there is no just reason to delay entry of final judgment for Aetna).

Wherefore, Aetna Life Insurance Company a/k/a Aetna Health of Illinois Inc. moves this court to dismiss Aetna from this litigation with prejudice, enter final judgment in Aetna’s favor and for such additional relief this court deems appropriate.

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<sup>1</sup> Plaintiff does not identify the authority under which his motion is brought. To the extent it is under Rule 41, Aetna’s consent is necessary because of its pending summary judgment motion.

Respectfully submitted,

s/Lynn U. Thorpe

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 25, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following: [stu@stuklaw.com](mailto:stu@stuklaw.com), and I certify that I have mailed by United States Postal Service the document to the following non CM/ECF participants: N/A.

s/Lynn U. Thorpe  
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**ATTORNEYS FOR DEFENDANTS AETNA LIFE INSURANCE COMPANY**